

Introduced by Senator Machado

February 21, 2003

An act to amend Sections 62066, 62196, 62201, 62711, and 62712 of, and to add and repeal Section 62066.1 of, the Food and Agricultural Code, relating to milk.

LEGISLATIVE COUNSEL'S DIGEST

SB 1036, as introduced, Machado. Milk: forward price contracts.

(1) Existing law, the Milk Stabilization Act, authorizes the Secretary of Food and Agriculture to establish minimum prices to be paid by handlers to producers, for market milk in any marketing area.

This bill would require the secretary to establish, by April 1, 2004, a pilot program authorizing milk producers and cooperative associations to voluntarily enter into forward price contracts, as defined, with milk handlers. The bill would prohibit a party from coercing another to enter into a forward price contract. Payments made by milk handlers to milk producers and cooperative associations, and prices received by milk producers and cooperative associations, under forward contracts would be deemed to satisfy all regulated minimum milk price requirements and total payment requirements imposed on handlers, producers, and cooperative associations. The bill would require the secretary to report monthly on the total amount of milk covered by cash forward contracts and the weighted average price of the milk under contract and to report on the volume of each month's milk that is under contract at various prices for each milk class, as specified. This bill would repeal this pilot program on January 9, 2009.

(2) Under existing law, the failure of any handler to pay for market milk delivered to him or her at the time and in the manner specified in



the contract with the producer is an unlawful trade practice, except as specified.

This bill would make the failure of any milk handler to pay for market milk delivered to him or her at the time and in the manner specified under a forward price contract an unlawful trade practice, except as specified.

(3) Under existing law, if a handler does not pay for market milk delivered to him or her at the time and in the manner specified in the contract, the handler shall pay the producer interest on the unpaid amount from the time the payment was due until paid at the rate of 12% per annum. This interest is in addition to any other penalties.

This bill would require, if a milk handler does not pay for market milk delivered to him or her at the time and in the manner specified under the provisions of a forward price contract, the handler to pay the milk producer interest on the unpaid amount, from the time the payment was due until paid, at the rate of 12% per annum, in addition to any other penalties.

(4) Under existing law the secretary is authorized to develop a milk equalization pool, as specified. The secretary is given various authority for purposes of enforcing the pooling arrangements.

This bill would impose specified requirements on handlers who enter into a forward price contracts with respect to obligations regarding pool pricing.

This bill would make technical, nonsubstantive changes.

Because a violation of the Milk Stabilization Act is a misdemeanor, and because this bill would add various prohibitions to that act, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 62066 of the Food and Agricultural
2 Code is amended to read:



1 62066. Notwithstanding any other provision of this code to
2 the contrary, the ~~director~~ *secretary*, in establishing minimum
3 prices to be paid by handlers to producers, for market milk in any
4 marketing area, may establish, as the applicable minimum prices,
5 those prices applicable within the marketing area of ultimate usage
6 of ~~such~~ *the* market milk, those prices applicable within the
7 marketing area where the plant of first receipt of ~~such~~ *the* market
8 milk is located, those prices applicable in the marketing area where
9 the producers place of production is located, or any of the above
10 or any combination of the above.

11 SEC. 2. Section 62066.1 is added to the Food and Agricultural
12 Code, to read:

13 62066.1. (a) The secretary shall, by April 1, 2004, establish
14 a pilot program authorizing milk producers and cooperative
15 associations to voluntarily enter into forward price contracts with
16 milk handlers.

17 (b) Payments made by milk handlers to milk producers and
18 cooperative associations, and prices received by milk producers
19 and cooperative associations, under forward contracts shall be
20 deemed to satisfy all regulated minimum milk price requirements
21 and total payment requirements imposed on handlers, producers,
22 and cooperative associations pursuant to this chapter, except as
23 provided in subdivision (d) of Section 62712.

24 (c) All forward price contracts entered into under the pilot
25 program shall be voluntary agreements of no longer than 12
26 months in duration.

27 (d) It shall be unlawful for any one party to coerce, in any
28 manner, another party to enter into a forward price contract.

29 (e) Forward price contracts shall only apply to the marketing of
30 milk that is not classified as Class 1 or otherwise intended for fluid
31 use.

32 (f) No forward price contract shall represent more than 75
33 percent of the individual contracting producer's monthly milk
34 production, exclusive of the forward price contract offered by the
35 producer's cooperative association to its members.

36 (g) Each forward price contract entered into under this pilot
37 program shall include a disclosure statement signed by both the
38 milk producer or cooperative association and the milk handler.

39 (h) The secretary shall report monthly the total amount of milk
40 covered by cash forward contracts and the weighted average price

1 of the milk under contract. The secretary shall also provide a
2 monthly report that shows the volume of each month's milk that
3 is under contract at various prices for each milk class, subject to
4 the existence of adequate numbers of contracts so as not to disclose
5 individual transactions.

6 (i) For the purposes of this section, "forward price contract"
7 means a contract entered into voluntarily by a processor and a milk
8 producer or cooperative association, under which the processor
9 agrees to purchase, and the producer or cooperative association
10 agrees to sell, a specified quantity of milk or milk components for
11 a specified period of time at a specified price level.

12 (j) No forward price contract entered into pursuant to this pilot
13 program may extend beyond the period in which this section is in
14 effect.

15 (k) This section shall remain in effect only until January 1,
16 2009, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before January 1, 2009, deletes or extends that date.

18 SEC. 3. Section 62196 of the Food and Agricultural Code is
19 amended to read:

20 62196. (a) The failure of any handler to pay for market milk
21 delivered to him or her at the time and in the manner specified in
22 the contract with the producer is an unlawful trade practice, except
23 as provided for in Section 62079.

24 (b) *The failure of any milk handler to pay for market milk*
25 *delivered to him or her at the time and in the manner specified*
26 *under a forward price contract entered into pursuant to Section*
27 *62066.1 is an unlawful trade practice, except as provided in*
28 *Section 62079.*

29 SEC. 4. Section 62201 of the Food and Agricultural Code is
30 amended to read:

31 62201. (a) If a handler does not pay for market milk delivered
32 to him or her at the time and in the manner specified in the contract,
33 the handler shall pay the producer interest on the unpaid amount
34 from the time the payment was due until paid at the rate of 12
35 percent per annum. This interest is in addition to any other
36 penalties provided in this chapter.

37 (b) If there is no contract for the delivery of milk to the handler
38 or the delivery was made as a single transaction between the
39 producer or handler, the handler shall pay the department interest
40 on the unpaid amount from the time the payment was due until paid

1 at the interest rate specified in subdivision (a). The interest is in
2 addition to any other penalties provided in this chapter.

3 *(c) If a milk handler does not pay for market milk delivered to*
4 *him or her at the time and in the manner specified under the*
5 *provisions of a forward price contract entered into pursuant to*
6 *Section 62066.1, the handler shall pay the milk producer interest*
7 *on the unpaid amount, from the time the payment was due until*
8 *paid, at the rate of 12 percent per annum. This interest is in*
9 *addition to any other penalties provided for in this chapter.*

10 SEC. 5. Section 62711 of the Food and Agricultural Code is
11 amended to read:

12 62711. (a) Except as provided in subdivision (h) of Section
13 62707, each producer shall be paid the highest usage for that
14 amount of his or her fluid milk production that is equal to his or
15 her pool quota and shall be paid the next highest usage for the
16 difference between his or her pool quota and his or her production
17 base under the production pool designated pursuant to this chapter
18 and the lowest usage for all milk produced in excess of his or her
19 production base under the overproduction pool designated
20 pursuant to this chapter.

21 (b) In calculating the pool value, the volume of milk that has
22 been classified as restricted use market milk shall be credited to the
23 handler at the class 4a or class 4b price, whichever is lower.

24 *(c) Payments made by milk handlers to milk producers and*
25 *cooperative associations, and prices received by milk producers*
26 *and cooperative associations, under forward contracts entered*
27 *into pursuant to Section 62066.1 shall be deemed to satisfy all*
28 *regulated minimum milk price requirements and total payment*
29 *requirements imposed on handlers, producers, and cooperative*
30 *associations pursuant to this chapter, except as provided in*
31 *subdivision (d) of Section 62712.*

32 SEC. 6. Section 62712 of the Food and Agricultural Code is
33 amended to read:

34 62712. (a) The secretary may require handlers, including
35 cooperative associations acting as handlers, to make reports at any
36 intervals and in any detail that he or she finds necessary for the
37 operation of the pool. The secretary may impose and collect a civil
38 penalty of one hundred dollars (\$100) from any handler or
39 cooperative association acting as a handler that does not file a
40 report on the date specified by the secretary pursuant to this

1 subdivision. Any funds collected pursuant to this subdivision shall
2 be deposited in the Department of Food and Agriculture Fund and,
3 upon appropriation by the Legislature, the funds may be expended
4 for the purposes of this chapter.

5 (b) For the purposes of enforcing this chapter, the secretary,
6 through his or her duly authorized representatives and agents, shall
7 have access to the records of every producer and handler. The
8 secretary shall have at all times, free and unimpeded access to any
9 building, yard, warehouse, store, manufacturing facility, or
10 transportation facility in which any market milk or market milk
11 product is produced, bought, sold, stored, bottled, handled, or
12 manufactured.

13 Any books, papers, records, documents, or reports made to,
14 acquired by, prepared by, or maintained by the secretary pursuant
15 to this chapter, which would disclose any information about
16 finances, financial status, or worth, composition, market share, or
17 business operations of any producer or handler, excluding
18 information that solely reflects transfers of production base and
19 pool quota among producers, is confidential and shall not be
20 disclosed to any person other than the person from whom the
21 information was received, except pursuant to the final order of a
22 court with jurisdiction, or as necessary for the proper
23 determination of any proceeding before the secretary.

24 (c) In conjunction with the pools authorized by this chapter, the
25 secretary may require handlers to make payments into a settlement
26 fund for fluid milk received and the secretary may provide for the
27 disbursement of moneys from the settlement fund in the course of
28 administering the pools. Handlers who have a financial obligation
29 to the pool resulting from the operation of the pooling plan shall
30 pay the obligations to the pool manager each month as requested.
31 All of these moneys shall be deposited in a bank or banks approved
32 by the secretary, and shall be paid out by the pool manager to
33 handlers who have pool credits resulting from the operation of the
34 pooling plan. All financial operations of each pool shall be audited
35 by the department at least once annually. The secretary may
36 require handlers to make such deductions from amounts due to
37 producers as he or she finds are necessary to establish a reserve
38 fund to insure prompt payment to producers.

39 (d) (1) *A handler who operates a pool plant and who enters*
40 *into a forward price contract with a producer or cooperative*

1 *association pursuant to Section 62066.1 shall continue to be*
2 *obligated to the pool at the announced minimum class prices. A*
3 *pool handler supplying a nonpool plant with milk under a forward*
4 *price contract shall likewise be obligated to the pool at the*
5 *announced minimum class prices.*

6 (2) *A handler who has a forward price contract with a milk*
7 *producer or cooperative association pursuant to Section 62066.1*
8 *shall continue to meet net pool obligations resulting from the*
9 *operation of the pooling plan.*

10 (3) *A pool handler who has a forward price contract with an*
11 *individual producer shall be obligated to pay to the producer the*
12 *announced pool prices, based on each producer's quota, base, and*
13 *overbase milk marketings, adjusted for the difference between the*
14 *price specified in the contract and the value of the contracted*
15 *milk's ultimate usage at minimum class prices. A handler who has*
16 *a forward price contract with a pool handler shall be obligated to*
17 *pay the pool handler the price specified in the contract for any milk*
18 *covered by the contract.*

19 (e) *The secretary may employ a pool manager to operate each*
20 *pool and may permit the pool manager to employ—such other*
21 *necessary personnel and incur such expenses incidental to the*
22 *operation of the pool as that the secretary finds are necessary. The*
23 *pool manager shall effectuate the purposes of Section 62711 by*
24 *designating the percentage of each price class (i.e., classes 1, 2, 3,*
25 *4a, and 4b) to be paid within each pool settlement classification*
26 *(i.e., quota pool, production pool, and overproduction pool), and*
27 *in so doing he or she shall allocate the highest usage available, first*
28 *to the quota pool, next to the production pool, and last to the*
29 *overproduction pool.*

30 ~~(e)~~

31 (f) *All pool quotas initially determined pursuant to Section*
32 *62707 shall be recognized and shall not in any way be diminished.*

33 (g) *For purposes of this section, "forward price contract"*
34 *means a contract entered into voluntarily by a processor and a*
35 *producer or cooperative association, under which the processor*
36 *agrees to purchase, and the producer or cooperative association*
37 *agrees to sell, a specified quantity of milk or milk components for*
38 *a specified period of time at a specified price level.*

39 SEC. 7. *No reimbursement is required by this act pursuant to*
40 *Section 6 of Article XIII B of the California Constitution because*

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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